

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 95 of 2018

M/s Siddharth Construction through Proprietor-Narendra Kumar Parakh S/o Shri Panchilal Parakh, Aged About 57 Years, R/o Parakh Mension, Gudhiyari, District- Raipur, Chhattisgarh.....(Plaintiff),
District : Raipur, Chhattisgarh **--- Appellant**

Versus

1. Chhattisgarh Housing Board through Housing Commissioner, Headquarter Shankar Nagar, Raipur, Distict- Raipur, Chhattisgarh.,
2. The Executive Engineer Chhattisgarh Housing Board, Veer Sawarkar Nagar, Heerapur, Raipur, District-Raipur, Chhattisgarh. At Present Address Division No. 3, Saddu, Raipur, District- Raipur, Chhattisgarh.
3. The Estate Officer Chhattisgarh Housing Board, Veer Sawarkar Nagar, Heerapur Raipur District- Raipur, Chhattisgarh At Present Address Division No. 3, Saddu, Raipur, District- Raipur, Chhattisgarh.....(*Defendants*). **--- Respondents**

For the Petitioner : Mr. Harishankar Patel, Advocate
For the Respondent : Mr. Sanjay Patel, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

14.11.2018

1. The present appeal is against the judgment dated 31.08.2018 passed by the learned Additional District Judge, Raipur in Civil Appeal No.15-A/2018 whereby the appellate Court has remanded the case for retrial.
2. Briefly stated facts of the case are that the plaintiff, appellant herein filed a suit that the defendant Housing Board (respondents herein) have encroached upon the land bearing Khasra No.226/2 admeasuring 50000 sqft., and has constructed the houses therein whereas the Housing Board was not the owner. The plaintiff claimed that the

construction so made be demarcated and the vacant possession of the land be given. The housing Board came out with reply that the construction was made over the land allotted to them bearing Kh.No.227 by the State and they have not encroached upon the said land.

3. During the course of trial, the plaintiff relied on demarcation report which was marked as Ex.P-1 and the trial Court decreed the suit in favour of the plaintiff appellant herein. When the said judgment was subject of appeal, the appellate Court interfered and observed that the reliance of the trial Court on the document of demarcation is not according to the land revenue Code and hence remanded the case for fresh adjudication after proper demarcation as both the parties were litigating over the boundaries of lands bearing Khasra No.226/2 & 227. The appellate Court has further observed that since the construction has been made and the plaintiff wanted to get the possession of his land, therefore, the plaintiff would be required to pay ad-veloram court fee. The appellate Court further held that unless and until the demarcation of land bearing Kh.No.227 is categorically done according to the procedure laid down, the averments of the plaintiff cannot be accepted.
4. Learned counsel for the appellant would submit that the demarcation and the order of trial Court would show that demarcation report in this case marked as Ex.P-1 was admitted by the witness of the defendant Housing Board that the demarcation was carried out before him, therefore, at the time of demarcation parties were represented. He further submits that the remand in the manner the Court has done

could not have been ordered as the finding of the trial Court was based on evidence which was led before it. He further submits that the statement of witnesses were not properly considered. He placed reliance in ***2014 (2) CGLJ 2 Anish Fulara vs. Devcharan*** and would submit that in similar fashion the remand in nature could not have been ordered without giving a specific finding on each issues.

5. Per contra, learned counsel for the respondent opposes the arguments and submits that the order of the appellate Court is well merited.
6. Perused the order of the appellate Court. A perusal of the order would show that the housing Board claimed that they have constructed the house over the land of Kh.No.227 admeasuring 22.34 acres whereas the plaintiff claimed that the Housing Board encroached upon the land bearing Khasra No.226/2 admeasuring 50000 sqft., which is adjacent to each other. The appellate Court has observed that earlier by order dated 02.03.2007 the trial Court allowed the application under Order 26 Rule 9 of CPC and directed the Revenue Inspector to demarcate the land bearing Kh.No.226/2 & 227. However, the said order was not complied with. Subsequently the plaintiff has produced his own demarcation report which the trial Court had relied upon. The appellate Court has observed that by earlier order the demarcation report which was directed to be given by Revenue Inspector has not been complied with. Further the appellate Court observed that the demarcation was carried out without the field map and the *Chandamunara* so as to identify the part of the property. The appellate Court

observed that neither the adjacent land owners were heard nor the field books were produced and to demarcate, the *Chandamunara* was also not done, therefore, it is not clear that how such demarcation which was relied on by the plaintiff was arrived. The appellate Court further observed that the demarcation report so produced by the plaintiff was not according to the direction given by the trial Court as such the same cannot be accepted. Consequently considering the fact that the parties were litigating over the area of the land of the respective two Khasra numbers which are adjacent to each other, directed fresh demarcation and retrial. The appellate court further observed that the construction having been made over th land, the suit appears to have not properly been valued and remanded the case afresh.

7. After going through the reasoning given by the Court it appears that both the parties were litigating over the area of land, one land bearing kh.No.226/2 and another was 227. The plaintiff claimed that the Housing Board has encroached upon his land bearing Kh.No.226/2 whereas Housing Board contended that they are over Kh.No.227. The trial Court considering this aspect specifically had ordered the respective lands to be demarcated by the Revenue Inspector. The demarcation, therefore, necessarily has to be carried out according to the provisions contained in section 129 of the Land Revenue Code. The rules are also framed in the Land Revenue Code to carry out such process of demarcation. Likewise, section 107 of the L.R. Code speaks about the field map which would be necessary to identify a particular part of land. So the observation made by the

appellate Court that the demarcation of land was carried out without the *Chandamunara* cannot be shelved as in order to identify the particular property the *Chandamunara* which facilitate the measurement of land from a particular point would be necessary.

8. Considering the nature of the order passed by the appellate court, it appears that unless and until the entire retrial is done, the actual *lis* of encroachment cannot be decided and only on the private report of demarcation furnished by the plaintiff, it cannot be acted upon. Under the facts and circumstances, I do not find any reason to interfere in the impugned order of remand as no prejudice is caused.
9. In the result, the appeal has no merit and is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**